

## South Carolina' s Business Court Pilot Program

On September 7, 2007, South Carolina Supreme Court Chief Justice Jean Hoefer Toal issued an administrative order establishing a Business Court in the Circuit Courts of three South Carolina counties “ to handle complex business, corporate, and commercial matters” for a two-year pilot period.<sup>1</sup> Chief Justice Toal’ s order followed an exhaustive study of business courts around the country by the South Carolina Task Force on Courts, and the Task Force’ s recommendation to move forward with a pilot program in South Carolina, which was enthusiastically supported by the South Carolina Bar.<sup>2</sup>

The jurisdiction of the Business Court is defined by reference to several titles of the South Carolina Code that implicate business, corporate, or commercial matters.<sup>3</sup> In addition, assignment to the Business Court is also appropriate “ for such other cases as the Chief Justice may determine.”<sup>4</sup> This discretionary aspect of the Business Court’ s jurisdictional bases was considered appropriate given the pilot or experimental nature of the program. The order does not include a jurisdictional requirement of complexity. The Business Court’ s jurisdiction is most similar to that of the North Carolina Business Court, widely recognized as a model for states considering the creation of such a specialized court.<sup>5</sup>

Assignment of a case to the Business Court may be made on motion by counsel for any party<sup>6</sup> or by the Chief Justice *sua sponte*.<sup>7</sup> Counsel seeking assignment, must file a motion with the Business Court Judge on an approved form provided by South Carolina Court

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<sup>1</sup> See Administrative Order No. 2007-09-07-01, Re: Business Court Pilot Program, The Supreme Court of South Carolina, Sep. 7, 2007, *available at* <http://www.judicial.state.sc.us/courtOrders/displayOrder.cfm?orderNo=2007-09-07-01> (“SC Admin. Order”).

<sup>2</sup> See Report of the South Carolina Bar’ s Task Force on Courts re: The Creation of a Business Court Pilot Program, Aug. 1, 2007.

<sup>3</sup> See SC Admin. Order.

<sup>4</sup> *Id.*

<sup>5</sup> See Mitchell L. Bach and Lee Applebaum, *A History of the Creation and Jurisdiction of Business Courts in the Last Decade*, 60 Bus. Law. 147, 170 (2004).

<sup>6</sup> Due to some initial confusion, this aspect of the program was clarified in a subsequent administrative order. See Administrative Order No. 2007-11-30-01, Re: Motion and Order for Case Assignment in the Business Court Pilot Program, Nov. 30, 2007, *available at* <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2007-11-30-01>.

<sup>7</sup> SC Admin. Order.

Administration.<sup>8</sup> The Business Court Judge then makes a recommendation to the Chief Justice regarding assignment, with the Chief Justice having the final authority regarding assignment.<sup>9</sup>

Once assigned, a case is under the “exclusive jurisdiction” of the Business Court Judge in the respective pilot county for the life of the case.<sup>10</sup> In addition, Business Court Judges are required to issue written orders on all decisions on motions to dismiss and for summary judgment under the South Carolina Rules of Civil Procedure.<sup>11</sup> Furthermore, Business Court Judges are “encouraged to issue written orders on other non-jury, pretrial matters.”<sup>12</sup> These written orders will be publicly available through the South Carolina Judicial Department’s website, which can be found at [www.sccourts.org](http://www.sccourts.org).<sup>13</sup>

In keeping with the spirit of a pilot program and advances in courtroom presentation, the Chief Justice’s order specifically encourages the use of technology by all parties in matters assigned to the Business Court.<sup>14</sup> For example, parties may be allowed to appear at hearings using telephonic or video-conferencing technologies. While the use of such technology is encouraged, the Business Court Judge presiding over a matter will have the discretion to make the final determination on whether such technology is warranted.<sup>15</sup>

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<sup>8</sup> See *id.*; Motion and Order for Case Assignment to the Business Court Pilot Program, South Carolina Court Administration BC Form 101, available at <http://www.sccourts.org/forms/dspFormID.cfm?formID=SCCABC101>.

<sup>9</sup> See SC Admin. Order.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See *id.*

<sup>14</sup> See SC Admin. Order

<sup>15</sup> See *id.*